No. 17093

United States Court of Appeals

for the Ninth Circuit

HUMBOLDT PLACER MINING COMPANY, a Corporation, and DEL DE ROSIER,

Appellants,

vs.

RAYMOND R. BEST, as State Supervisor, Bureau of Land Management, et al.,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Northern Division.

Phillips & Van Orden Co., 4th & Berry, San Francisco, Calif.—11-25-60

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

CHARLES L. GILMORE,
301 Crocker-Anglo Bank Building,
Sacramento, California,

Attorney for Plaintiff.

LAURENCE E. DAYTON,
United States Attorney;
CHARLES R. RENDA,
Assistant U. S. Attorney,
422 Post Office Building,
San Francisco, California,

Attorneys for the Defendants.

In the District Court of the United States of America for the Northern District of California, Northern Division

No. 8076

HUMBOLDT PLACER MINING COMPANY, a Corporation, and DEL DeROSIER,

Plaintiffs,

vs.

RAYMOND R. BEST, as State Supervisor, Bureau of Land Management, and WALTER E. BECK as Manager, District Land Office, Bureau of Land Management, Department of the Interior,

Defendants.

COMPLAINT FOR INJUNCTION

Plaintiffs complain of Defendants and allege:

I.

Jurisdiction is founded upon:

(a) A Federal question arising under 28 U.S.C.A. 1358, Eminent Domain proceedings by the United States;

(b) Rights to private property under Amendment 5, Constitution of the United States;

(c) The matter in controversy exceeds in value the sum of $10,000.00.

II.

That Raymond R. Best, Defendant, is now and at all times stated herein has been the State Administrator for the area of California of the Bureau of Land Management, Department of the Interior with offices at Sacramento, California, and residing therein.

That Walter E. Beck, Defendant, is Manager of the District Land Office, Bureau of Land Management, Department of the Interior at Sacramento, California, residing therein, which area includes the premises hereinafter described.

That all acts performed by them as hereinafter set forth are claimed by them to have been done and performed in their respective official capacities pursuant to Reorganization Plan No. 3, Sections 1 and 2; effective May 24, 1950 (15 F.R. 3174, 64 Stat. 1262), amending 1946 Reorganization Plan No. 3, Section 403, effective July 16, 1946 (11 F.R. 7876, 60 Stat. 1100), as amended by divers directives.

III.

That Humboldt Placer Mining Company, a Corporation, is a Corporation organized and existing under the laws of the State of California and doing business in said State; and that said Corporation, Plaintiff and Plaintiff Del de Rosier, are the owners entitled to the possession of all those certain mines and mining claims situate, lying, and being in the County of Trinity, State of California, described as follows, to wit:

Ukiah as amended—$S\frac{1}{2}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$ Sec. 5, T. 34 N., R. 8 W., M.D.M.—Misc. Book 12, page 166;

Covelo as amended—$SE\frac{1}{4}$ Sec. 6, T. 34 N., R. 8 W., M.D.M.—Misc. Book 12, page 165;

Humboldt—$SW\frac{1}{4}$ Sec. 6, T. 34 N., R. 8 W., M.D.M.—Misc. Book 9, page 590;

White—$E\frac{1}{2}NW\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}$ Sec. 7, T. 34 N., R 8 W., M.D.M.—Misc. Book 10, page 622;

Tannery—$SE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}SE\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$ Sec. 2, T. 34 N., R. 9 W., M.D.M.—Misc. Book 10, page 412;

Tannery No. 2—Lots 1 and 2, $SW\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$ Sec. 2, T. 34 N., R. 9 W., M.D.M.—Book 16, page 189;

Jackson — $SW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$ Sec. 2, T. 34 N., R. 9 W., M.D.M.—Misc. Book 10, page 626;

Cademartori—$NW\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ (or $NW\frac{1}{4}$ of Lot 4) Sec. 2, $S\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}$ $NW\frac{1}{4}$, Lots 1 and 2 or $N\frac{1}{2}NE\frac{1}{4}$ Sec. 3, T. 34 N., R. 9 W., M.D.M. —Book 15, page 369;

Furnell—$NW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$, Sec. 2, $SE\frac{1}{4}$-$NE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$ Sec. 3, T. 34 N., R. 9 W., M.D.M.—Book 29, page 364;

Last Chance as amended—$W\frac{1}{2}SW\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$ Sec 1, T. 34 N., R. 9 W., M.D.M.—Misc. Book 12, page 168;

Lewis—SE¼NE¼, Lot 1, S½ of Lot 2, S½N½ of Lot 2, Sec. 1, T. 34 N., R. 9 W., M.D.M.—SW¼-NW¼ Sec. 6, T. 34 N., R. 8 W., M.D.M.—Misc. Book 10, page 627;

Enough as amended—N½SE¼, NE¼SW¼, SW¼NE¼ Sec. 1, T. 34 N., R. 9 W., M.D.M.—Misc. Book 12, page 164;

Faurrell—S½SE¼ Sec. 34, N½NE¼SW¼, E½NW¼SW¼, SW¼SW¼ Sec. 35, T. 35 N., R. 9 W., M.D.M.—Book 15, page 371.

IV.

That the said mining claims and each of them include lands of established and known mineral character upon which as to each separate claim a discovery of valuable mineral, to wit, gold, has been made on each, and that the said claims and each of them have been and are held and worked by extensive excavations for their valuable gold content; that the value thereof is in excess of ten thousand ($10,000.00) Dollars.

V.

That the said Defendant, purportedly acting in their official capacities, filed in their offices as above set forth an amended contest complaint charging in the name of the United States of America as Contestant, that the said claims and each of them were non-mineral in character; that no discovery had been made and ordering Plaintiffs herein under penalty of cancellation and loss of each one of said

mining locations to answer said alleged complaint within thirty days; that a true copy of said amended contest complaint is hereto attached, hereby referred to, made a part hereof and marked Exhibit "A."

VI.

That said Defendants so acted notwithstanding that there was and now is another action pending between the same parties for the same cause and involving the same lands and mining claims in the District Court of the United States for the Northern District of California, Northern Division, and identified therein as Civil Number 7570, in eminent domain and filed in said Court and Writ of Possession issued to the United States of America, long prior to the issuance of the aforesaid amended complaint by Defendants herein. Reference is hereby made to said eminent domain proceedings on file in this court.

VII.

That said Defendants in so proceeding through the medium of said alleged contest complaint were acting in excess of their statutory authority therefor; and the said proceeding will result in a multiplicity of suits whereby the Plaintiffs herein must defend both before the said Bureau of Land Management and the District Court of the United States aforesaid.

VIII.

That the acts of Defendants will further require Plaintiffs to enter in upon prolonged and useless

litigation and cause Plaintiffs herein to submit wholly to an unlawful exercise of attempted jurisdiction on the part of the Defendants.

IX.

That the United States of America as Contestant in the said Contest is the Plaintiff in the said eminent domain proceedings and has selected this United States District Court as the proper court to determine all questions involved in the alleged contest, and Plaintiffs allege that Defendants have invoked and do now invoke the power and sovereignty of the United States of America in this proceeding of contest without any warrant or authority of law.

X.

Plaintiffs allege there is no adequate, complete or speedy remedy at law available under any administrative process or before any other Court in order to save Plaintiffs' mining property from becoming further encumbered in useless litigation; that no officer of the Department of the Interior has any power or authority to finally settle and determine the constitutional questions herein involved or any power or authority to authorize the cancellation and confiscation of the mining claims of Plaintiffs aforesaid, by any alleged contest until the questions involved have been determined by the above-entitled Court and that the settlement and determination of all questions of title and of the right of the United States to the use and occupa-

tion of said premises are wholly and entirely within the exclusive jurisdiction of the above-entitled Court.

Wherefore, Plaintiffs pray judgment against Defendants:

1. That they and their subordinates, agents, attorneys and clerks and each of them be permanently enjoined and restrained from in any manner proceeding further against Plaintiffs herein, under the said alleged amended contest complaint or other similar proceeding seeking cancellation or nullification of the mining claims of said Plaintiffs.

2. That pending hearing in this Court on this Complaint, the said Defendants and each of them and their subordinates, agents, attorneys and clerks be enjoined and restrained from issuing any notices or orders based upon or having reference to said contest complaint or other similar proceeding or taking any action of any kind or character based thereon, tending to cloud the title of Plaintiffs to said mining claims or any of them or to cancel the same by any order or directive based upon or referring to said alleged contest complaint.

3. That Plaintiffs be awarded such damages as may be proven and established as being suffered by them through the acts of Defendants herein.

4. And for such other, further separate and additional relief as to the Court seem meet and equitable in the premises.

5. And for Plaintiffs costs of suit.

/s/ CHAS. L. GILMORE,
Attorney for Plaintiffs.

Duly verified.

EXHIBIT A

United States Department of the Interior, Bureau of Land Management, Land Office, Sacramento, California

Contest No. 10-747

UNITED STATES OF AMERICA,

Contestant,

vs.

HUMBOLDT PLACER MINING COMPANY, a Corporation, and DEL DE ROSIER,

Contestees.

Involving: Ukiah, Covelo, Humboldt, White, Tannery, Tannery No. 2, Jackson; Cademartori, Furnell, Last Chance, Lewis, Enough and Faurrell Placer Mining Claims.

AMENDED COMPLAINT

In accordance with Title 43, Code of Federal Regulations, Part 221, the United States of America, acting by and through the State Supervisor, Bureau of Land Management, Department of the Interior, brings this amended contest against the

contestees named above, and for cause of action alleges:

I.

The lands hereinafter described are public lands of the United States.

II.

The contestant is informed and believes that the above-named contestees are the owners, or assert the ownership of the above-named unpatented mining claims. The contestant is also informed and believes that the address of the Humboldt Placer Mining Company is c/o E. W. Phipps, President, Box 115, Eureka, California, and that the address at which service may be had on Humboldt Placer Mining Company is c/o Anthony J. Kennedy, Authorized Attorney-in-Fact and Law and Agent, 635 Forum Building, Sacramento, California, and that the address of Del de Rosier is 2226-28th Street, Sacramento, California.

III.

Said placer mining claims are situate in Trinity County, State of California, and as nearly as they can be identified, they are embraced within the following areas and are recorded in the official records of Trinity County:

Ukiah as amended—S½NW¼, N½SW¼ Sec. 5, T. 34 N., R. 8 W., M.D.M.—Misc. Book 12, page 166;

Covelo as amended—SE¼ Sec. 6, T. 34 N., R. 8 W., M.D.M.—Misc. Book 12, page 165;

Humboldt—SW¼. Sec. 6, T. 34 N., R. 8 W., M.D.M.—Misc. Book 9, page 590;

White—E½NW¼, W½NE¼ Sec. 7, T. 34 N., R. 8 W., M.D.M.—Misc. Book 10, page 622;

Tannery—SE¼NE¼, E½SE¼, SW¼SE¼ Sec. 2, T. 34 N., R. 9 W., M.D.M.—Misc. Book 10, page 412;

Tannery No. 2—Lots 1 and 2, SW¼NE¼, NW¼SE¼ Sec. 2, T. 34 N., R. 9 W., M.D.M.—Book 16, page 189;

Jackson — SW¼SW¼NW¼, E½SW¼NW¼, SE¼NW¼, E½NE¼NW¼ Sec. 2, T. 34 N., R. 9 W., M.D.M.—Misc. Book 10, page 626;

Cademartori—NW¼NW¼NW¼ (or NW¼ of Lot 4) Sec. 2, S½SW¼NE¼, SE¼NW¼, Lots 1 and 2 or N½NE¼ Sec. 3, T. 34 N., R. 9 W., M.D.M.—Book 15, page 369;

Furnell—NW¼SW¼NW¼, SW¼NW¼NW¼, E½NW¼NW¼, W½NE¼NW¼ Sec. 2, SE¼NE¼, NE¼SW¼NE¼ Sec. 3, T. 34 N., R. 9 W., M.D.M.—Book 29, page 364;

Last Chance as amended—W½SW¼, S½NW¼ Sec. 1, T. 34 N., R. 9 W., M.D.M.—Misc. Book 12, page 168;

Lewis—SE¼NE¼, Lot 1, S½ of Lot 2, S½N½ of Lot 2, Sec. 1, T. 34 N., R. 9 W., M.D.M.—SW¼NW¼ Sec. 6, T. 34 N., R. 8 W., M.D.M.—Misc. Book 10, page 627;

Enough as amended—N½SE¼, NE¼SW¼, SW¼NE¼ Sec. 1, T. 34 N., R. 9 W., M.D.M.—Misc. Book 12, page 164;

Faurrell—S½SE¼ Sec. 34, N½NE¼SW¼, E½NW¼SW¼, SW¼SW¼ Sec. 35, T. 35 N., R. 9 W., M.D.M.—Book 15, page 371.

IV.

According to the records of the Sacramento Land Office, the N½ of Lot 1, now designated as Lot 5 and the S½N½ of Lot 2, now designated as a portion of Lot 6 of Section 1, T. 34 N., R. 9 W., M.D.M., which affects the Lewis placer claim, is embraced within Forest Homestead Patent No. 1076218 of June 10, 1935, without a reservation of minerals to the Government. The SW¼SW¼, E½NW¼SW¼ Section 35 and the SE¼SE¼ Section 34, T. 35 N., R. 9 W., M.D.M., which affects the Faurrell placer claim, is embraced in Mineral Entry No. 663 patented July 1, 1908.

Therefore, the issues raised in the pleadings affect only those lands title to which is still in the United States.

So far as known to the contestant there are no proceedings pending before the Department of the Interior for the acquisition of title to or an interest in such lands on behalf of any party other than the contestees.

V.

With respect to the Tannery No. 2, Cademartori, Furnell and Lewis placer mining claims the contestant charges separately and collectively that:

(a) The land embraced within the claims is non-mineral in character.

(b) Minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.

(c) The Cademartori placer claim, as described in the location notice, embraces incontiguous tracts of land, and is therefore contrary to law.

VI.

With respect to the following claims the contestant charges separately and collectively that each of the following legal subdivisions is non-mineral in character and, therefore, should be excluded from the affected mining claims:

(a) The NW¼SW¼NW¼, NE¼SW¼NW¼, NW¼SE¼NW¼, NE¼SE¼NW¼, SE¼NE¼-SW¼ in Section 5, T. 34 N., R. 8 W., M.D.M. which affects the Ukiah placer claim as amended.

(b) The NW¼NW¼SE¼, NE¼NW¼SE¼, SW¼SE¼SE¼, SE¼SE¼SE¼ in Section 6, T. 34 N., R. 8 W., M.D.M. which affects the Covelo placer claim as amended.

(c) The NW¼NW¼SW¼ (or NW¼ of Lot 6), NE¼NW¼SW¼ (or NE¼ of Lot 6), NW¼-NE¼SW¼, NE¼NE¼SW¼ in Section 6, T. 34 N., R. 8 W., M.D.M., which affects the Humboldt placer claim.

(d) The SE¼SE¼NW¼, SW¼SW¼NE¼ in Section 7, T. 34 N., R. 8 W., M.D.M. which affects the White placer claim.

$SW^1_4SW^1_4NE^1_4$, $SE^1_4SW^1_4NE^1_4$, in Section 1, T. 34 N., R. 9 W., M.D.M. which affects the Enough placer claim as amended.

(i) The $NW^1_4NE^1_4SW^1_4$, $NE^1_4NE^1_4SW^1_4$ in Section 35, T. 35 N., R. 9 W., M.D.M. which affects the Faurrell placer claim.

(j) The $SE^1_4NE^1_4NE^1_4$ (or SE^1_4 of Lot 1), $SW^1_4SE^1_4NW^1_4$, $SE^1_4SE^1_4NW^1_4$, $SW^1_4SW^1_4$-NE^1_4, $SE^1_4SW^1_4NE^1_4$ in Section 3, T. 34 N., R. 9 W., M.D.M., which affects the Cademartori placer claim.

Wherefore, Contestant requests that it be allowed to prove its allegations and that the mining claims

(e) The $NW^1_4SE^1_4NE^1_4$, $NE^1_4SE^1_4NE^1_4$, $SW^1_4SE^1_4NE^1_4$, $SE^1_4SE^1_4NE^1_4$ in Section 2, T. 34 N., R. 9 W., M.D.M., which affects the Tannery placer claim.

(f) The $NE^1_4NE^1_4NW^1_4$ (or NE^1_4 of Lot 3), $SE^1_4NE^1_4NW^1_4$ (or SE^1_4 of Lot 3), $NE^1_4SW^1_4$-NW^1_4, $NW^1_4SE^1_4NW^1_4$ in Section 2, T. 34 N., R. 9 W., M.D.M which affects the Jackson placer claim.

(g) The $NW^1_4SW^1_4NW^1_4$, $NE^1_4SW^1_4NW^1_4$, $NW^1_4SE^1_4NW^1_4$, $NE^1_4SE^1_4NW^1_4$, $SW^1_4SW^1_4$-NW^1_4, $SE^1_4SW^1_4NW^1_4$, $SW^1_4SE^1_4NW^1_4$, SE^1_4-$SE^1_4NW^1_4$ in Section 1, T. 34 N., R. 9 W., M.D.M. which affects the Last Chance placer claim as amended.

(h) The $NW^1_4SW^1_4NE^1_4$, $NE^1_4SW^1_4NE^1_4$,

named in Paragraph V be declared null and void, and that the mining claims named in Paragraph VI be invalidated as to the lands described in said paragraph.

Notice

This amended complaint is filed in the Sacramento Land Office, Bureau of Land Management, 10th Floor, California Fruit Building, 4th and J Streets, Sacramento, California, and any papers pertaining thereto shall be sent to such office for service on the contestant.

Unless contestees file an answer to the amended complaint in such office within thirty (30) days after service of this notice, the allegations of the amended complaint will be taken as confessed.

Dated: March 17, 1960.

/s/ R. R. BEST,
State Supervisor.

[Endorsed]: Filed April 18, 1960.

[Title of District Court and Cause.]

MOTION TO VACATE TEMPORARY RESTRAINING ORDER; TO DENY PRELIMINARY INJUNCTION; AND TO DISMISS IN PART

Defendants, through their attorney, Charles R. Renda, Assistant United States Attorney for the Northern District of California, in response to the

Court's order to show cause why a preliminary injunction pendente lite should not be issued (set for hearing on May 9, 1960), move the Court to (1) vacate the temporary restraining order entered herein without notice to defendants on April 18, 1960; (2) deny plaintiff's motion for a preliminary injunction pendente lite; and (3) dismiss the complaint herein with respect to all claims except that known as the Faurrell claim. In support of this motion, defendants submit the attached Memorandum and affidavits.

/s/ CHARLES R. RENDA,
Assistant U. S. Attorney.

[Endorsed]: Filed May 9, 1960.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

This is a complaint for injunction. Plaintiffs allege that defendants, in their official capacity acting on behalf of the United States, have initiated contest proceedings against certain claims before the Bureau of Land Management. The claims involved are unpatented mining claims located on the public lands. The grounds of contest include the allegations that the land involved is non-mineral in character, and that minerals have not been found in sufficient quantities to constitute a valid discovery. Plaintiffs allege that the claims involved are the subject of condemnation suits filed by the

United States in this Court. A temporary restraining order was granted, on the posting of security. Defendants have moved the Court to vacate that order, and to dismiss the complaint.

It is not disputed that the Government may institute contests of claims such as are alleged, unless the filing of the condemnation suits requires a different result (Cameron vs. United States, 252 U.S. 454). Furthermore, it is not disputed that the United States may elect to try issues more usually tried in a contest proceeding in a United States District Court (United States vs. Schultz, 31 F. 2d 764). The only question requiring a decision in this case is whether the filing of a condemnation suit in the United States District Court constitutes an irrevocable choice of forum by the United States, so that all contests of the character here involved must then be resolved in such Court.

The affidavits and exhibits filed by defendants in this case disclose that the purpose of the filing of the condemnation suits was to get immediate possession. No authority, or reason, is advanced by plaintiffs which will support the proposition that such suits constitute an irrevocable election of forum. It may be assumed that if the Government raised the issue of validity of the claims in this Court, and at the same time vexed plaintiffs by filing contest claims before the Bureau of Land Management, this Court would have power to protect its jurisdiction, and to prevent harassment of plaintiffs, by enjoining further prosecution of

the contests. In fact, a failure to do so would likely constitute an abuse of discretion (Crosley Corporation vs. Hazeltine Corporation, 122 F. 2d 925). But where a court has jurisdiction of an entire controversy, it may wait until a court or tribunal of more limited jurisdiction adjudicates the issues peculiarly within its competency, and then give binding effect to the decision of such court or tribunal (United States vs. Eisenbeis, 112 Fed. 190; United States vs. Adamant Co., 197 F. 2d 1; and See: Railroad Comm'n vs. Pullman Co., 312 U.S. 496; and Louisiana P. & L. Co. vs. City of Thibodaux, 360 U.S. 25).

The Bureau of Land Management is an agency with special competency and administrative experience in the hearing of contests of claims relating to the public lands. The attempt of counsel for plaintiffs to characterize that body as a "star chamber" is without justification. The procedural safeguards afforded to contestees (See: 43 C.F.R. Sects. 221.1, et seq.), include the right of review by the courts under the Administrative Procedure Act (Title 5, U.S.C., Sects. 1001-1011; and Adams vs. Witmer, 271 F. 2d 29).

Assuming that this Court has the power to enjoin further proceedings in the contests which are now at issue, there is no good reason for the exercise of such power. To the contrary, there is every reason to allow the issues of the contests to be resolved by the administrative agency, with its special experience and expertise in these matters.

Harmful multiplicity of litigation will not be involved, for the issues raised in the contests will not be tried by this Court in the condemnation cases. Until the resolution of the contests, the question of whom, if anybody, is entitled to just compensation will be held in abeyance. The power of the Federal courts to review agency decisions under the Administrative Procedure Act does not involve harmful multiplicity of litigation, because a court in such cases exercises a limited function of review.

It is the considered opinion of the Court that defendants' motion to dismiss should be granted. The factual questions, which have arisen as to which contested claims are actually involved in which condemnation suits, need not be resolved. Further, it is not necessary to consider defendants' contention that plaintiffs had themselves instituted patent proceedings before the Bureau of Land Management prior to the filing of the condemnation suits.

It Is, Therefore, Ordered that the temporary restraining order issued by this Court in this cause on April 18, 1960, be, and it is, hereby vacated and dissolved.

It Is Further Ordered that plaintiffs' complaint, and the cause of action sought to be stated therein, be, and the same is, hereby dismissed;

And It Is Further Ordered that defendants prepare all documents necessary for the complete disposition of this case, in accordance with this memorandum and order, and lodge such documents with

the Clerk of this Court pursuant to the applicable rules and statutes.

Dated: June 21, 1960.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed June 21, 1960.

In the United States District Court in and for the Northern District of California, Northern Division

No. 8076

HUMBOLDT PLACER MINING COMPANY, a Corporation, and DEL DE ROSIER,

Plaintiffs,

vs.

RAYMOND R. BEST, as State Supervisor, Bureau of Land Management, and WALTER E. BECK, as Manager, District Land Office, Bureau of Land Management, Department of the Interior,

Defendant.

SUMMARY JUDGMENT

This matter having come on before the Court on motion of the defendants to dismiss upon the pleadings; and the Court having considered the various affidavits and documents submitted by the parties hereto, as well as the pleadings, and having here-

fofore filed a memorandum and order in defendants' favor, wherein the temporary restraining order previously issued by this Court was vacated and dissolved and plaintiffs' complaint and cause of action were dismissed, the Court being now fully advised, finds and concludes that:

1. Defendants' motion to dismiss shall be deemed as one for summary judgment pursuant to Rule 12(c) F.R.C.P.

2. There is no genuine issue between the parties as to any material fact herein.

3. The sole question raised by this suit and defendants' motion is whether the filing of a condemnation suit in the United States District Court constitutes an irrevocable choice of forum by the United States, so that a subsequent contest proceeding otherwise properly initiated before the Bureau of Land Management, U. S. Department of the Interior, involving unpatented mining claims located on the property condemned, should be enjoined by the Court.

4. In the condemnation cases here involved the purpose of the suit was to obtain immediate possession of the lands, and the Government has not raised therein the issue of validity of the mining claims concerned; on the contrary, it has specifically asserted its right to retain jurisdiction of this issue for determination by the Bureau of Land Management.

5. Even if the issue of validity had been submitted to this Court in the various condemnation

proceedings, B L M in its role as a quasi-judicial body, could also determine this issue and the Court, in its discretion, could then accept and give binding effect to said decisions.

6. In the circumstances of this case, there is no multiplicity of litigation involved since the issue of validity to be decided in the B L M proceedings will not be decided in the condemnation proceedings.

7. Further, until the resolution of the B L M contest proceedings involving mining claims now in condemnation, the question of who, if anybody, is entitled to just compensation for the claims condemned will be held in abeyance.

8. Plaintiffs here have failed to show any reason or authority which would compel the Court to find that there has been an irrevocable choice of forum by the Government and that the Court should, therefore, issue the injunctive relief sought.

Wherefore, it is hereby ordered, adjudged and decreed that judgment be entered in favor of defendants, with costs, if any.

Dated: July 11, 1960.

/s/ SHERRILL HALBERT,
Judge, United States District Court, Northern District of California.

Lodged July 1, 1960.

[Endorsed]: Filed July 11, 1960.

Entered July 13, 1960.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Humboldt Placer Mining Company, a Corporation, and Del De Rosier, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the Summary Judgment entered in this action on July 13, 1960.

September 8, 1960.

/s/ CHAS. L. GILMORE,
Attorney for Plaintiffs.
Humboldt Placer Mining Company and Del de Rosier.

[Endorsed]: Filed September 8, 1960.

[Title of District Court and Cause.]

REQUEST TO DETERMINE AMOUNT OF COST AND SUPERSEDEAS BOND

Plaintiffs above named, having filed notice of appeal to the United States Court of Appeals for the Ninth Circuit, request the Court to fix the amount of combined cost and supersedeas bond on appeal in the above-entitled action, pursuant to Rule 73(c) Rules of Civil Procedure.

Dated September 8, 1960.

/s/ CHAS. L. GILMORE,
Attorney for Appellants.

[Endorsed]: Filed September 8, 1960.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO REPLY ON APPEAL AND DESIGNATION OF RECORD ON APPEAL

Appellants intend to rely on the following points on appeal of the above-entitled cause.

The District Court of the United States for the Northern District of California, Northern Division, erred in denying relief to appellants and entering summary judgment for appellees and in the following particulars:

A. The Court erred in concluding that the United States, having selected the forum for the determination of its rights to acquire the property of appellants, had the authority to abandon that election in part.

B. The Court erred in ignoring the implications set forth in the affidavits and exhibits filed with and accepted by the Court on behalf of appellees.

C. The Court erred in failing and neglecting to recognize the fact that a mining location existing for more than five years and upon which no proceedings were ever instituted by the Federal Government to set the same aside, was and is a vested estate until so set aside or cancelled.

D. The Court erred in concluding the Bureau of Land Management was a proper and lawful body

or tribunal to determine the validity of the mining locations and claims herein involved, when the Department of the Interior had already prejudged the validity thereof.

E. The Court erred in concluding that the United States could at will, during the pendency of an action before the Court, change its forum, modify its claims to the detriment of a defendant, and thereby fail to follow the concept of due process of law.

F. The Court erred in concluding the only purpose of the condemnation suit by the Federal Government involving appellants' mining locations and claims was to obtain immediate possession of the same, thus denying the right of appellants to have the value of the property determined by a jury.

G. The Court erred in granting appellees a summary judgment where the following were justiciable issues:

1. Appellants alleged in their verified compiaint that each of the thirteen mining claims set forth and described therein included lands of established and known mineral character upon which as to each separate claim a discovery of gold had been made, and that each of the said claims had been held and worked by extensive excavations for their valuable gold content.

2. That appellants alleged in their verified complaint that the actions therein set forth by appellees would result in a multiplicity of suits.

3. That appellants alleged in their verified complaint that the actions of the appellees would require appellants to enter in upon prolonged and useless litigation and cause appellants to submit wholly to an unlawful exercise of attempted jurisdiction on the part of appellees.

Appellants designate all of the record on file herein as being material to consideration of this appeal.

Dated September 8, 1960.

Respectfully submitted,

/s/ CHAS. L. GILMORE,
Attorney for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed September 8, 1960.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Whereas the above-named plaintiffs have filed in the District Court of the United States of America for the Northern District of California, Northern Division, a notice of appeal to the United States Court of Appeals for the Ninth Circuit, from a judgment of said District Court entered July 13,

1960, in that certain action as entitled above and numbered therein Civil 8076.

Now, Therefore, The Fidelity and Casualty Company of New York, a corporation duly organized and existing under the laws of the State of New York and duly licensed to transact a general surety business in the State of California, in consideration of the premises, undertakes for itself, its successors and assigns, in the sum of two hundred fifty and no/100 dollars ($250.00), and promises that this bond is and shall be conditioned to secure the payment of all costs in the above action if for any reason the appeal is dismissed or if the judgment is affirmed, or of such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of two hundred fifty and no/100 dollars ($250.00).

In testimony whereof, the said surety has caused these presents to be executed and its official seal affixed by its duly authorized attorney at Sacramento, California, on the 12th day of September, A.D. 1960.

[Seal] THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,

By /s/ A. I. CARRINGTON,
Attorney.

State of California,
County of Sacramento—ss.

On this 12th day of September, in the year one thousand nine hundred and sixty, before me, A. C. Lutz, a Notary Public in and for the said county and state, duly commissioned and sworn, personally appeared A. I. Carrington, known to me to be the attorney of The Fidelity and Casualty Company of New York, the Corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ A. C. LUTZ,
Notary Public in and for the County of Sacramento, State of California.

My commission expires April 29, 1961.

[Endorsed]: Filed September 12, 1960.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of

California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein as designated.

Complaint.

Motion to vacate temporary restraining order to deny preliminary injunction and to dismiss in part.

Memorandum and order.

Summary judgment.

Notice of appeal.

Request to determine amount of cost and supersedeas bond.

Statement of points on which appellants intend to rely on appeal and designation of record on appeal.

Cost bond on appeal.

In witness whereof, I have hereunto set my hand and the seal of said Court this 15th day of September, 1960.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 17093. United States Court of Appeals for the Ninth Circuit. Humboldt Placer Mining Company, a Corporation, and Del de Rosier, Appellants, vs. Raymond R. Best, as State Supervisor, Bureau of Land Management, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed: September 16, 1960.

Docketed: September 23, 1960.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for the Ninth Circuit.

33 In United States Court of Appeals for the Ninth Circuit

Before: CHAMBERS, JERTBERG and KOELSCH, Circuit Judges

Minute entry of argument and submission

April 14, 1961

This cause coming on for hearing, Mr. Charles L. Gilmore argued for the appellant, and Mr. A. Donald Mileur, Attorney, Department of Justice, argued for the appellee, thereupon the Court ordered the cause submitted for consideration and decision.

34 In United States Court of Appeals for the Ninth Circuit

Before: CHAMBERS, JERTBERG and KOELSCH, Circuit Judges

Minute entry of order directing filing of opinion and filing and recording of judgment

August 18, 1961

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

35 In United States Court of Appeals for the Ninth Circuit

No. 17093

HUMBOLDT PLACER MINING COMPANY, A CORPORATION, AND DEL DE ROSIER, APPELLANTS

vs.

RAYMOND R. BEST, AS STATE SUPERVISOR, BUREAU OF LAND MANAGEMENT, AND WALTER E. BECK, AS MANAGER, DISTRICT LAND OFFICE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

Opinion

August 18, 1961

Before CHAMBERS, JERTBERG and KOELSCH, Circuit Judges

JERTBERG, Circuit Judge.

Appellants appeal from a summary judgment dismissing their complaint seeking injunctive relief against the appellees.

Jurisdiction of the district court is predicated on the alleged presence of a federal question. Title 28 U.S.C.A. Sections 1358 and 1331. The amount in controversy is alleged to exceed $10,000. This Court has jurisdiction to review the judgment under Title 28 U.S.C.A. Sections 1291 and 1294.

It appears that on June 27, 1957, the United States of America, under its powers of eminent domain, filed an action in condemnation in the United States District Court for the Northern District of California, Northern Division, seeking to acquire title to or outstanding adverse interests in lands
36 located in Trinity County, California, on part of which are located unpatented mining claims of which appellants claim to be the owners and to which they claim the right of possession. These mining claims are located upon public lands the paramount title to which is in the United States. On instructions from the Solicitor of the Department of the Interior, dated June 5, 1957, the district court in the condemnation proceedings issued to the United States a writ of possession.

On March 17, 1960 appellees, who are officials of the Bureau of Land Management, Department of the Interior, filed in the office of the Bureau of Land Management, at Sacramento, California, a government contest seeking an adjudication by the Bureau of Land Management of the validity of appellants' mining claims. Said government contest complaint alleged that the land embraced within appellants' mining claims is non-mineral in character and that minerals had not been found within the limits of the claims in sufficient quantities to constitute a valid discovery. Appellants were ordered to appear before the Bureau of Land Management in this contest proceedings.

Thereafter appellants instituted their action in the district court, seeking to enjoin and restrain the appellees from proceeding in any manner in connection with the alleged government contest complaint filed with the Bureau of Land Management on behalf of the government. In this complaint filed in the district court appellants alleged that they were the owners of the mining claims and that each of them included lands of established and known mineral character, upon which as to each separate claim a discovery of valuable mineral has been made and that each of them has been and is held and worked by extensive excavation for its valuable gold content. Appellants further alleged that the appellees in proceeding with said government contest were acting in excess of authority in that, because of the pendency of the condemnation action, the administrative proceedings will result in a multiplicity of suits and that the appellants will be subjected to prolonged litigation, and that the settlement and determination of all questions of title are wholly and entirely within the exclusive jurisdiction of the district court in the condemnation proceedings.

Appellees filed no answer to the complaint filed by appellants in the district court, but in response to the court's
37 order to show cause why a preliminary injunction should not be issued moved the district court to vacate a temporary restraining order previously issued, and moved the district court to dismiss the complaint. The district court treated the motion of appellees as a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Following a hearing, a summary judgment in favor of appellees was entered.

Absent the filing and the pendency of the condemnation action, appellants concede that the United States may initiate a contest proceeding before the Bureau of Land Management for the purpose of having adjudicated the legality and validity of an unpatented mining claim on public land. Such is undoubtedly the law. See Cameron v. United States, (1920), 252 U.S. 450.

The United States, plaintiff in the condemnation proceedings, is not a party to the instant case. The appellees (defendants in the district court) are subordinate officials of the Bureau of Land Management of the Department of the In-

terior. While we are not advised whether the district court has deferred further proceedings in the condemnation action pending the final determination of the administrative proceedings, it is clear from the following language of the district court's opinion in the instant case that such action will be taken. In the opinion of the district court Humboldt Placer Mining Company and Del De Rosier v. Raymond R. Best, etc., 185 F. Supp. 290, he stated:

"Harmful multiplicity of litigation will not be involved, for the issues raised in the contest will not be tried by this Court in the condemnation cases. Until the resolution of the contests, the question of who, if anybody, is entitled to just compensation will be held in abeyance."

It is not disputed that a valid mining claim on public land, though unpatented, is an interest in real property which cannot be taken from the owner thereof under the power of eminent domain except upon the payment of just compensation. North American Transportation & Trading Company v. United States, (1918), 53 Ct. Cls. 424, affirmed (1920) 253 U.S. 330; Phillips v. United States (9th Cir. 1957), 243 F. 2d. 1.

38 The complaint in condemnation was filed in the district court on behalf of the United States by the Attorney General of the United States, at the instance and direction of the Solicitor of the Department of the Interior, exercising the authority of the Secretary of the Interior, pursuant to the provisions of Title 40 U.S.C.A. § 257.[1]

The district court has jurisdiction of a condemnation action.[2] Inherent in the condemnation proceedings is the issue of the validity of appellants' mining claims. If valid, the appellants

[1] "§ 257. Condemnation of realty for sites and other uses

"In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasurer, under this section and section 258 of this title, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice."

[2] Title 28 U.S.C.A. § 1358. "Eminent domain

"The district courts shall have original jurisdiction of all proceedings to condemn real estate for the use of the United States or its departments or agencies."

are entitled to just compensation for the taking thereof. If invalid, appellants have no compensable interest therein. The jurisdiction of the district court to determine the validity of the mining claims on public lands is not questioned. See United States v. Schultz, (9th Cir. 1929), 31 F. 2d 764.

If any doubt should exist as to whether the validity of the mining claims was put in issue in the condemnation proceedings, such doubt is removed by the allegation contained in the condemnation complaint wherein it is alleged that the plaintiff is the owner of the lands upon which the mining claims are located and that each of the mining claims is invalid. While we recognize that neither the filing of the condemnation action nor the order for immediate possession obtained therein constitutes any admission by the plaintiff as to the validity of the mining claims—see United States v. 93,970 Acres of
39 Land, et al. (1959), 360 U.S. 328—nevertheless, the issue of validity of the mining claims is not removed from the condemnation action on the mere allegation that the mining claims are invalid.

Thus it is clear to us that the Secretary of the Interior did not resort to the condemnation action solely for the purpose of obtaining possession of the lands upon which the mining claims are located, and it is equally clear to us that the Secretary elected to put into issue in the condemnation action the validity of the mining claims.

After 44 months, during which the issue of validity was before the district court in the condemnation action, and during which, by virtue of writ of possession granted by the district court to the plaintiff at the instance and request of the Secretary of the Interior, the plaintiff was and still is in possession of the lands upon which the mining claims are located, and during which the appellants, who do not contest the right and power of the plaintiff to condemn their claimed valid mining claims, were presumably waiting trial on the issues involved in the condemnation action, the Secretary of the Interior, through his subordinates, initiated the administrative proceedings whereby he seeks to select another forum in which to adjudicate the validity of the mining claims.

The broad question presented by this appeal is whether the district court erred in refusing to enjoin appellees from proceeding further in the administrative proceedings, and in stating that the condemnation proceedings will be held in

abeyance pending the final decision of the administrative tribunal.

The effect of the district court's action is to require appellants to depart from the district court and undergo litigation in an administrative tribunal on one of the issues before the district court in the condemnation proceedings. If the decision is adverse to the appellants, the appellants must exhaust their administrative remedies before seeking judicial review of such decision. See Adams v. Witmer, (9th Cir. 1959), 271 F. 2d 29; Title 5 U.S.C.A. § 1009. Included in the administrative remedy is an appeal to the Secretary of the Interior. Title 43, Code of Federal Regulations § 221.31.[1] The Solicitor of the Department of the Interior may exercise all of the authority of the Secretary of the Interior with respect to the disposition of appeals to the Secretary from the decisions of the Director of the Bureau of Land Management [or his delegates]. Order No. 2509, 17 Federal Register 6794, Section 23. The Solicitor is the official at whose direction the condemnation action was filed by the Attorney General on behalf of the United States, and in which it is alleged that appellants' mining claims are invalid. An adverse decision before the administrative tribunal may require appellants to proceed to this Circuit. See Adams v. Witmer, supra.

On the other hand, if the administrative decision should be in favor of appellants, appellants must return to the district court in order to have determined the issue of just compensation to which appellants may be entitled, which issue is beyond the power and jurisdiction of the administrative tribunal.

In Humboldt Placer Mining Company v. Best, supra, the district court stated:

"The affidavits and exhibits filed by defendants in this case disclose that the purpose of the filing of the condemnation suits was to get immediate possession. No authority, or rea-

[1] 43 Code of Federal Regulations

§ 221.31 Right of appeal to the Secretary of the Interior. Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official."

son, is advanced by plaintiffs which will support the proposition that such suits constitute an irrevocable election of forum. It may be assumed that if the Government raised the issue of validity of the claims in this Court, and at the same time vexed plaintiffs by filing contest claims before the Bureau of Land Management, this Court would have power to protect its jurisdiction and to prevent harassment of plaintiffs by enjoining further prosecution of the contests. In fact, a failure to do so would likely constitute an abuse of discretion. (Crosley Corporation v. Hazeltine Corporation, 122 F. 2d 925, 41

But where a court has jurisdiction of an entire controversy, it may wait until a court or tribunal of more limited jurisdiction adjudicates the issues peculiarly within its competency, and then give binding effect to the decision of such court or tribunal. (United States v. Eisenbeis, 112 Fed. 190; United States v. Adamant Co., 197 F. 2d 1; and See Railroad Comm'n. v. Pullman Co., 312 U.S. 496; and Louisiana P. & L. Co. v. City of Thibodaux, 360 U.S. 25.)

While it is clear from other parts of the district court's opinion that in stating "the purpose of the filing of the condemnation suits was to get immediate possession . . . the court did not intend to foreclose appellants from a hearing on the issue of just compensation should the decision of the administrative tribunal be favorable, we believe, for the reason hereinabove stated, that the court was in error in stating that the issue of the validity of the mining claims are not raised in the condemnation proceedings.

It is made clear by the above quoted language from the decision of the district court, and the authorities therein cited, that the district court was of the view that there existed in the district court and the administrative tribunal concurrent jurisdiction to determine the issue of validity of the mining claims. In our view, the Secretary of the Interior invoked the jurisdiction of the district court to have such issue determined by the district court. We note that Rule 71A(h) of the Federal Rules of Civil Procedure provides that if an action involves the exercise of the power of eminent domain, and in the absence of any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation, that any party may have a trial by jury on the issue of just compensation by filing a demand therefor unless the court in its discretion orders determination of such issue

by a commission of three persons appointed by it. The concluding sentence of said section is, "Trial on all issues shall otherwise be by the court." No statute or controlling authority has been called to our attention indicating that the administrative tribunal, within the Department of the Interior retains jurisdiction to adjudicate the validity of mining claims after the Secretary of the Interior has invoked the jurisdiction of the district court by the filing of a condemnation action in which is raised the same issue.

42 Appellees rely on United States v. Minnie Baker 60 I.D. 241 (1948), a decision of the Solicitor of the Department of the Interior in which it was held that proceedings to condemn public land for military purposes and taking possession thereof by the government would not affect the authority of the Bureau of Land Management to adjudicate the validity of a mining claim located on the land taken. The only authority cited for such conclusion is Cameron v. United States, supra. The Cameron case does not support the decision of the Solicitor. Eminent domain proceedings were not involved in Cameron. The jurisdiction of the district court was not invoked until after the Land Department of the Department of the Interior had adjudicated that the mining claim of Cameron was invalid. When Cameron refused to surrender possession of his mining location, the United States instituted an action in the district court in the nature of trespass to eject and dispossess him.

The judgment of the district court is vacated and set aside and the cause remanded to the district court for further proceedings consistent with the views herein expressed.

[File endorsement omitted.]

43 In United States Court of Appeals for the Ninth Circuit

No. 17093

HUMBOLDT PLACER MINING COMPANY, A CORPORATION, AND DEL DE ROSIER, APPELLANTS

v.

RAYMOND R. BEST, AS STATE SUPERVISOR, BUREAU OF LAND MANAGEMENT, ET AL., APPELLEES

Judgment

Filed and entered August 18, 1961

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and hereby is vacated and set aside and that this cause be and hereby is remanded to the District Court for further proceedings consistent with the views herein expressed.

[File endorsement omitted.]

44 [Clerk's certificate to foregoing transcript omitted in printing.]

45 Supreme Court of the United States

No. ..... October Term, 1961

[Title omitted.]

Order extending time to file petition for writ of certiorari

November 15, 1961.

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Dec. 16, 1961.

WM. O. DOUGLAS,
Associate Justice of the Supreme Court of the United States.

Dated this 15th day of November 1961.

46 Supreme Court of the United States

No. 611, October Term, 1961

RAYMOND R. BEST, ET AL., PETITIONERS

v.

HUMBOLDT PLACER MINING COMPANY, ET AL.

Order allowing certiorari

February 19, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U.S. GOVERNMENT PRINTING OFFICE 1962